IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4719 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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SECRETARY (IP) - Petitioner(s)
Versus
MODERN CONSTRUCTION CO LTD - Respondent(s)

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Appearance :
MR. KAMAL TRIVEDI, Ld. Advocate General with MR. K.L.PANDYA, AGP for Petitioner(s) : 1, 1.2.1,1.2.2
MR GT DAYANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 03/08/2006

ORAL JUDGMENT

1. By filing instant Petition under Article 226 / 227 of the Constitution of India, the Petitioner seeks to challenge the order dated 24.10.2003 recorded below application exhs. 535, 549 and 551 in Special Civil Suit No. 26 of 1987 by the learned 3rd Joint Civil Judge (SD), District Banaskantha at Himmatnagar, by which the application exhs. 535 and 551 filed by the Respondent / original Plaintiff, for permitting it to tender evidence, i.e. the examination-in-chief on affidavit, has been allowed whereas application exh.549 filed by the Petitioner, raising objection to that application, has been

rejected.

2. Having heard K.L.Pandya, learned AGP for the Petitioner, Mr. G.T.Dayani, learned advocate for the Respondent and having perused the impugned order and also the statutory provisions contained under Order 18 Rule 5 of the Code of Civil Procedure (“the Code” for short) which has been amended with a laudable object to save the time of parties, advocates and Courts and also the reported decision of the Supreme Court in the case of Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd., AIR 2004 SC 355, wherein the Supreme Court has interpreted the amended provision of Order 18 Rule 4 and 5 of the Code and states the manner of recording evidence in appealable cases and in non-appealable cases, and in view of the fact that there is no dispute that the present case is an appealable case, as per the provisions of Order 18 Rule 5 of the Code, according to this Court, evidence-in-chief, in the form of affidavit is permissible.

3. In aforesaid view of the matter, according to this Court, the learned trial Judge has committed no illegality or infirmity, much less jurisdictional error in passing the impugned order, requiring interference of this Court in exercise of powers conferred under Article 227 of the Constitution of India.

4. Seen in the above context, the petition lacks merit and deserves to be rejected.

5. For the foregoing reasons, the petition fails and accordingly it is rejected, with no order as to costs. Rule is discharged. Interim relief granted at the time of issuance of Rule shall stand vacated.

(A.M.Kapadia,J)

Jayanti*